

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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|---------------------------------|---|--------------------------|
| In the matter of |) | |
| WSBS LICENSING, INC. |) | |
| |) | |
| WSBS-DT, Facility ID No. 72053 |) | |
| Key West, Florida |) | |
| |) | CGB-CC-0837 ¹ |
| WSBS-CD, Facility ID No. 29547 |) | |
| Miami, <i>et al.</i> , Florida |) | |
| |) | |
| KTBU LICENSING, INC. |) | |
| |) | |
| KTBU(DT), Facility ID No. 28324 |) | |
| Conroe, Texas |) | |
| |) | |
| MEGA MEDIA HOLDINGS, INC. |) | |
| |) | |
| MEGA TV Network |) | |
| |) | |
| Petition for Exemption of |) | |
| Closed Captioning Requirement |) | |
| To: The Commission | | |

**FURTHER SUPPLEMENT AND AMENDMENT TO PETITION FOR EXEMPTION
OF CLOSED CAPTIONING REQUIREMENT
FOR WSBS LICENSING, INC., KTBU LICENSING, INC. AND
MEGA MEDIA HOLDINGS, INC.**

WSBS Licensing, Inc. ("*WSBS Licensing*"), licensee of television station WSBS-DT, Key West, Florida, and Class A television station WSBS-CD, Miami, *et al.*, Florida (together "*WSBS-TV*"), KTBU Licensing, Inc. ("*KTBU Licensing*"), licensee of television station KTBU(DT), Conroe, Texas ("*KTBU*"), and Mega Media Holdings, Inc. ("*MMHF*"), owner of the MEGA TV

¹ A copy of this document is also being filed via the Commission's Electronic Comment Filing System in Docket CG-06-181.

television programming network (“*MEGA TV*”), by their attorneys and pursuant to Sections 79.1(f) and 1.65 of the Commission’s Rules, respectfully submit this Further Supplement and Amendment to Petition for Exemption of Closed Captioning Requirement (the “*Further Supplement and Amendment*”).

WSBS Licensing filed its Petition for Exemption of Closed Captioning Requirement (the “*Petition*”) on August 8, 2008. The Petition was opposed by a standardized letter objection, captioned as an Opposition to Petition for Exemption, filed on behalf of several advocacy groups.² On February 9, 2009, WSBS Licensing filed a Reply to Opposition to Petition for Exemption (the “*Reply*”). In addition, on March 28, 2012, WSBS Licensing filed a Supplement to Petition for Exemption of Closed Captioning Requirement (the “*Supplement*”) in order to provide updated information as a result of the *Anglers for Christ Ministries, Inc.* decision.³ The Petition and related pleadings remain pending.

The Supplement was filed approximately one week prior to the Commission’s April 5, 2012 Letter notifying WSBS Licensing of the need to file updated information on its pending Petition (the “*FCC Letter*”). Accordingly, certain information required by the FCC Letter was not included in the Supplement. With this Further Supplement and Amendment, WSBS Licensing seeks to address the missing categories of information required by the FCC Letter. In addition, since the Petition was filed, Spanish Broadcasting System, Inc. (“*SBS*”), the indirect parent of WSBS Licensing and KTBU Licensing and the direct parent of MMHI, acquired KTBU and significantly expanded the MEGA TV television network. Accordingly, this Further

² See *Opposition to Petition for Exemption*, filed on behalf of Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Hearing Loss Association of America; Association of Late-Deafened Adults, Inc.; American Association of People with Disabilities; and California Coalition of Agencies Serving the Deaf and Hard of Hearing.

³ See *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941 (2011) (“*Anglers Reversal MO&O*”).

Supplement and Amendment (i) provides clarity concerning the separate operations of WSBS-TV, KTBU and the MEGA TV television network, and (ii) requests that the Petition currently on file be amended to cover WSBS-TV, KTBU and MEGA TV based on the undue burden⁴ standard set forth in 47 C.F.R. § 79.1(f)(2) of the Commission's Rules.

In its Petition and Supplement, WSBS Licensing demonstrated that it met the statutory requirements and standards necessary for exemption from the closed captioning requirements based on the undue burden standard. Specifically, WSBS Licensing demonstrated the complex nature and high cost of providing closed captioning for WSBS-TV's Spanish-language programming, the negative impact that imposition of closed captioning-related expenses would have on the programming and operation of WSBS-TV, and the substantial financial losses incurred by WSBS-TV and the MEGA TV network in their efforts to produce and distribute quality original Spanish-language programming. In this Further Supplement and Amendment, WSBS Licensing, KTBU Licensing and MMHI provide further information demonstrating that the entities meet the statutory requirements and standards for an undue burden exemption.

I. Clarification Regarding Separate Operations of MEGA TV, WSBS Licensing, Inc. and KTBU Licensing, Inc.

The Petition was originally filed on August 8, 2008 on behalf of WSBS Licensing, Inc., licensee of WSBS-TV. In the Petition, WSBS Licensing sought an exemption from the closed captioning requirements for WSBS-TV. MEGA TV is owned by MMHI, which is a wholly-owned, direct subsidiary of SBS. The original petitioner, WSBS Licensing, is also a wholly-owned, indirect subsidiary of SBS. At the time of the initial filing, MEGA TV's network

⁴ The petitioners are cognizant that the Commission now analyzes requests for closed captioning exemptions under an "economically burdensome" standard. See *Anglers Reversal MO&O*. The Commission has stated that, on an interim basis, it interprets the term "economically burdensome" as synonymous with the "undue burden" definition in Section 713(e) of the Communications Act. See *id.* at 14960. "Undue burden" is used herein for the sake of consistency with the initial Petition.

programming was aired solely on WSBS-TV; therefore, the network and station operations were treated interchangeably, but the Petition sought a closed captioning exemption only for WSBS-TV. Since 2008, SBS has acquired another owned-and-operated station (KTBU), and the MEGA TV network has expanded and entered into several affiliation agreements to provide programming to stations not owned by SBS and to multichannel video programming distributors (“MVPDs”), such as Verizon FIOS and DirecTV. For the sake of clarification, this Further Supplement and Amendment provides (i) information with respect to the combined television operations of WSBS-TV, KTBU and MEGA TV, and, (ii) requests an exemption for WSBS-TV, KTBU and MEGA TV.

II. Supplemental Information Regarding the Nature and Cost of Closed Captioning on WSBS-TV, KTBU and MEGA TV.

When WSBS Licensing filed its Petition in 2008, Commission rules required WSBS-TV to caption, each calendar quarter, an average of 1350 hours of Spanish language video programming, or all of its new non-exempt Spanish language video programming, whichever was less. *See* Petition at 6; 47 C.F.R. § 79(b)(3)(iii). Compliance with this requirement would have equated to an annual cost of \$820,540 per year for WSBS-TV. *See* Petition at 6. Commission rules, however, would have permitted WSBS-TV to limit closed captioning expenditures to two percent of WSBS-TV’s gross annual revenues, or, at the time, approximately \$240,000. *See* Petition at 6; Reply at 5. As explained in the Petition, such an additional expenditure would have constituted an undue burden on WSBS-TV, and would have hampered the development of new Spanish language programming.

Now, in 2012, WSBS-TV and KTBU are required by Commission rules to caption “100% of . . . new nonexempt Spanish language video programming.” 47 C.F.R. § 79.1(b)(3)(iv). Compliance with this requirement would amount to an estimated combined

annual expense for WSBS-TV and KTBU of between \$450,000 and \$900,000.⁵ At the time the Petition and Reply were filed, approximately one-third of WSBS-TV's programming was produced and distributed by MMHI, the founder of MEGA TV. Until October 17, 2011, this programming was exempt under the "new network" provision of the Commission's closed captioning rules.⁶ Since the "new network" exemption has expired, WSBS-TV, KTBU and MEGA TV are permitted to limit closed captioning expenditures to 2% of gross revenues from the previous calendar year. Under this scenario, the stations' and MEGA TV's 2011 closed captioning costs would still have been approximately \$402,514.⁷ As explained in the Petition and Reply, and as updated below, the television station operations of SBS have consistently incurred substantial financial losses from operations. Additional expenditures in the hundreds of thousands of dollars would undoubtedly constitute an undue burden and hamper the development of new programming on the stations and the MEGA TV network.

III. Supplemental Information Regarding the Financial Resources of WSBS Licensing, KTBU Licensing and MMHI and the Effect of the Closed Captioning Requirements on the Operations of WSBS-TV, KTBU and MEGA TV.

In 2008, when it filed its Petition, WSBS Licensing noted that the operating loss from the television operations of SBS was \$20,428,000 in 2006 and \$12,717,000 in 2007. Petition at 7. Subsequently, losses from television operations were incurred for each of the next four years:

⁵ This figure is based on captioning 20 hours per day of programming. The cost of Spanish language captioning has decreased somewhat since WSBS Licensing filed the Petition in 2008, and is now estimated at between \$62 and \$121 per hour. *See Declaration of Alex Aleman* (attached to the Supplement). Additional expenses would be incurred for taping and for the provision of dedicated phone lines. *See Reply* at 4.

⁶ *See* Petition at 6; 47 C.F.R. § 79.1(d)(9).

⁷ 2010 compliance costs would have been approximately \$377,887, and 2009 compliance costs would have been approximately \$359,384. Gross revenues figures for these years are reported in the Form 10-K reports of SBS and cover all television operations of SBS.

\$36,342,000 in 2008; \$16,045,000 in 2009; \$10,585,000 in 2010; and \$8,595,000 in 2011.⁸

Thus, losses from SBS' television operations from 2006 through 2011 totaled \$104,712,000.

Clearly, with losses at this level, SBS' television operations cannot absorb sizeable additional expenses without a significant negative impact on the production of Spanish language programming and overall station operation. If WSBS-TV, KTBU and MEGA TV were to incur substantial additional expenses in closed captioning their programming, the budget available for the production or acquisition of new primetime programming would be reduced, and the viewers of WSBS-TV, KTBU and other MEGA TV affiliates would suffer because the amount of new originally produced Spanish-language programming would decline. Clearly, the additional hundreds of thousands of dollars it would cost to close caption its programming would constitute an undue burden upon WSBS Licensing, KTBU Licensing and MMHI.

⁸ Source: 2009, 2010, 2010 and 2011 SBS Form 10-K reports.

IV. Conclusion.

For the reasons set forth in the Petition, Reply, the Supplement and this Further Supplement and Amendment, WSBS Licensing, KTBU Licensing and MMHI respectfully request a continued exemption from the closed captioning requirements.

Respectfully submitted,

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July 5, 2012

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CERTIFICATE OF SERVICE

I, Deborah Morris, hereby certify that on this 5th day of July, 2012, a copy of the foregoing Further Supplement and Amendment to Petition for Exemption of Closed Captioning Requirement is being sent via first class, U.S. Mail, postage prepaid, to the following:

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